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Federal Communications CommissionFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In re Applications of)	MM Docket No. <u>93-54</u>
GAF BROADCASTING COMPANY, INC.)	File No. BRH-910201WL
For Renewal of the License)	
of FM Broadcasting Station WNCN)	
New York, New York)	
CLASS ENTERTAINMENT)	File No. BPH-910430ME
AND COMMUNICATIONS, L.P.)	
THE FIDELIO GROUP, INC.)	File No. BPH-910502MQ
For a Construction Permit)	
for a New FM Station on)	
104.3 MHz at New York, New York)	

To: Administrative Law Judge Joseph Chachkin

OPPOSITION TO PETITION FOR INTERVENTION

GAF Broadcasting Company, Inc. ("GAF"), by its attorneys, hereby respectfully opposes the Petition for Intervention ("Petition") in the above-captioned proceeding filed on April 19, 1993, by Listeners' Guild, Inc. ("Guild").¹ In opposition, the following is shown.

Guild alleges that it is a party-in-interest in this proceeding, entitled to intervene as of right pursuant to Section 1.223(a) of the Commission's Rules. In the alternative, Guild

¹Although Guild's Petition is dated April 19, counsel for GAF did not receive it until April 26, 1993, a full week later. On April 28 the Presiding Judge granted GAF an extension of time until today to oppose the Petition.

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argues that its long history of involvement in the affairs of

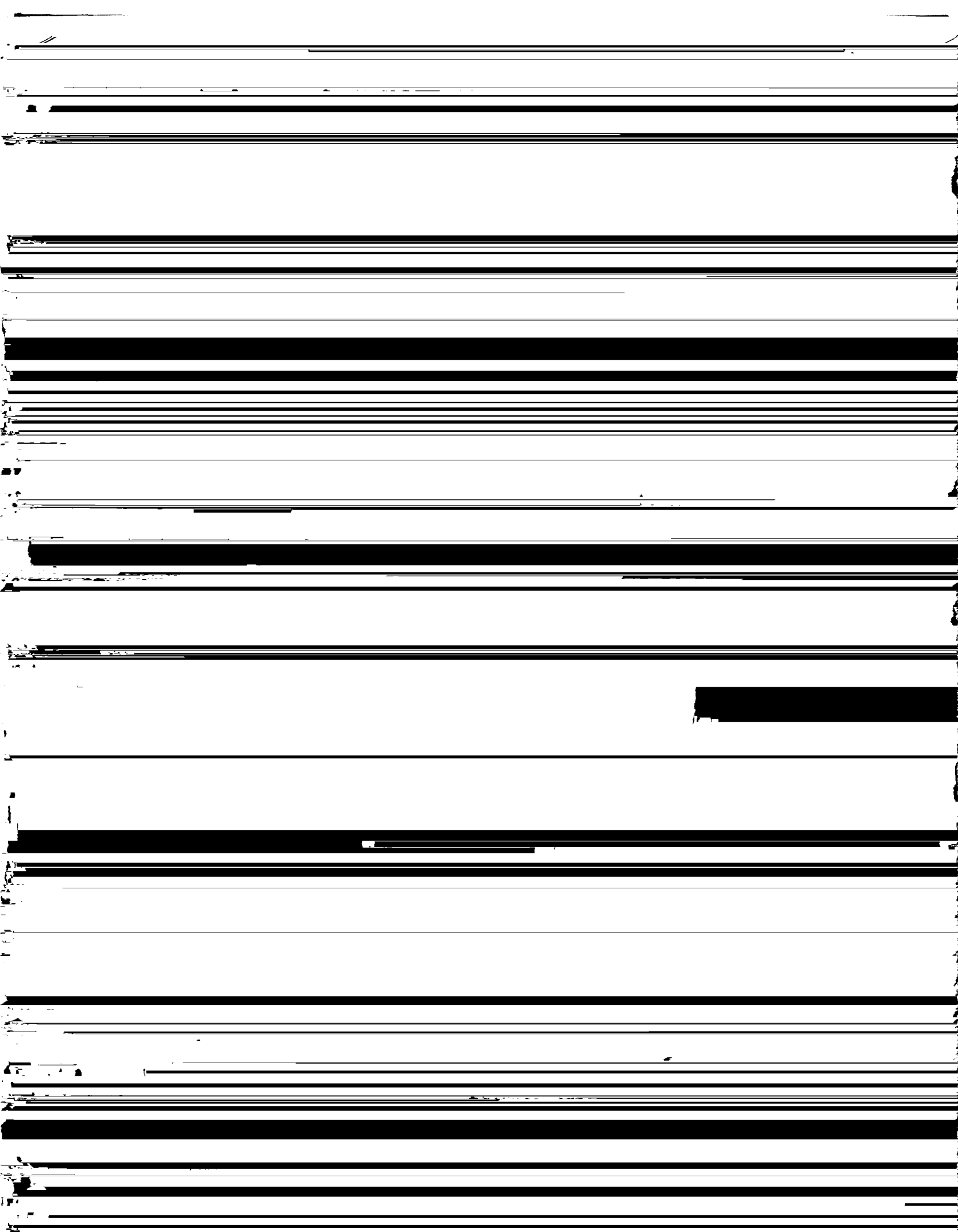
WYON (RM) qualifies it to assist the Commission in determination

84-329, released July 16, 1984, recon. denied, 58 RR 2d 69 (1985), aff'd, Listeners' Guild, Inc. v. FCC, 813 F.2d 465 (D.C. Cir. 1987). The Commission and Court of Appeals also affirmed the Presiding Judge's denial of Guild's petition to intervene in the 1981 proceeding. Just last year the Commission affirmed the Mass Media Bureau's denial of the Guild's petition to deny a 1988 application for consent to the transfer control of GAF. GAF Broadcasting Co., Inc., 7 FCC Rcd 3225, 70 RR 2d 1505 (1992), appeal pending, Listeners' Guild, Inc. v. FCC, 92-1270 (D.C. Cir. June 25, 1992). Moreover, as detailed below, all of Guild's allegations considered by the Hearing Designation Order in this proceeding ("HDO") were rejected. 8 FCC Rcd 1742 (ASD 1993).

Guild's efforts to date in the pending renewal proceeding are of no help to Guild as it attempts to bootstrap itself into a party-in-interest position. Guild's claim that the HDO upheld its standing as a party-in-interest is patently disingenuous. On the contrary, what the order stated was that:

Guild claims standing as a party-in-interest.
Guild's allegations will be considered
because the organization has adequately
demonstrated that it has petitioner status.

HDO at ¶ 30 (emphasis added). As the Mass Media Bureau recognized in opposing Guild's present Petition, the fact that Guild had petitioner status does not make it a party-in-interest to the comparative hearing, since none of the issues it requested were designated for hearing. See Mass Media Bureau's Opposition To Petition For Intervention at 2.



participation they must furnish specific factual allegations supporting the contention that grant of the subject application would not serve the public interest. In the absence of a particularized interest in the outcome of a proceeding relevant to petitioners' status as members of the listening public, a mere institutional interest in the general subject matter of a proceeding does not warrant granting party status. GAF Broadcasting Company, Inc., FCC 84-245, released May 30, 1984, at ¶ 6, recon. denied, FCC 84-582, released November 27, 1984, aff'd, Listeners' Guild, Inc. v. FCC, supra.

Guild has not shown how its interest will be adversely affected. None of the allegations it made have been designated for hearing. Rather, it claims the institutional interest of seeking to assure that WNCN is "held by a licensee that is best fit to provide service in the public interest." Petition at 3. Of course, this is the role to be played by the Mass Media Bureau and ultimately by the Presiding Judge in this comparative hearing. Guild has not shown that they will be unable to do so.

Furthermore, a would-be intervenor must demonstrate that its intervention would assist the Commission in resolving the issues which were designated for hearing. Central Alabama Broadcasters, Inc., 45 RR 2d 1184, 1185 (ALJ, 1979); Victor Muscat (KVMP), 31 FCC 2d 620, 22 RR 2d 1001, 1003 (1971); The Trustees of the University of Pennsylvania, 37 RR 2d 487, 489 (ALJ 1976). Here, not one of the issues sought by Guild has been designated for hearing. Rather, the issues designated concern only the standard

comparative issues, i.e., the choice of applicants, and the basic qualifications of the Fidelio Group, Inc. ("Fidelio"). Guild has not indicated that it will advocate the grant of a particular applicant over the others. Nor is it likely that Guild will seek to adduce evidence under the two basic qualifications issues concerning Fidelio, an applicant formed by Guild's longtime leader, T'ing Pei. While Guild claims that it will offer allegations concerning GAF's "character," no character issue has been designated against GAF. Indeed, it seems likely that Guild would hinder rather than assist in the comparative hearing, by continuing to raise the same baseless issues which the Commission has repeatedly denied.

In a footnote to its Petition, Guild seeks to distinguish its unsuccessful attempt to intervene in the last WNCN comparative renewal hearing. In that proceeding, the Presiding Judge denied the Guild's request after it refused to take a position on the only issues designated for hearing, the standard comparative issues of which applicant would better serve the public interest. The Commission affirmed the ALJ on the grounds that the petitioner failed to show not only how it would assist in the determination of issues, but also that it had an interest in the proceeding sufficient to justify intervention. The petitioner's statements that it had not prejudged the relative merits of the applicants, but would not necessarily be neutral after a full record was developed, were not sufficient to demonstrate a sufficient personal stake. The Commission

therefore held that Guild could adequately protect its interest by participating as a non-party witness or an amicus. GAF Broadcasting Company, Inc., FCC 84-245, supra.

Guild has attempted to rectify the shortcoming of its previous petition for leave to intervene by stating that it does not have a neutral position here. Guild states that it wishes to present evidence which goes to the character of GAF. However, as noted above, there are no issues related to the character qualifications of GAF, only general comparative issues. Although it may be that Guild would take a position in the comparative hearing that GAF should not receive a renewal expectancy or a comparative advantage over the other applicants, there is nothing in Guild's petition to demonstrate that it has particular or unique knowledge such that its aid is needed to resolve the comparative issues before the Commission. Certainly, one would expect that the Mass Media Bureau and the other two applicants would present all of the evidence which is relevant to GAF and its renewal application.

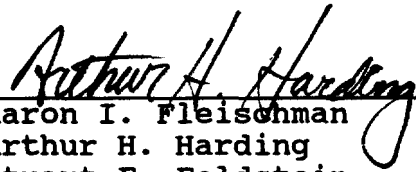
Guild points to the fact that it has requested reconsideration of the Mass Media Bureau's refusal to designate the issues requested in its Petition to Deny, and that Guild has lodged a

present posture of this case is such that there is no issue which would justify grant of Guild's Petition for Intervention.

Therefore, it is clear that Guild is not a party-in-interest entitled to intervention as of right under Section 1.223(a). Likewise, Guild has shown no basis as to why its participation would assist the Commission in the determination of the comparative issues in this proceeding, and thus its request for discretionary leave to intervene under Section 1.223(b) should not be granted.

Respectfully submitted,

GAF BROADCASTING COMPANY, INC.



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Date: May 5, 1993

CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm Fleischman and Walsh, hereby certify that I have this 5th day of May, 1993 placed a copy of the foregoing "Opposition To Petition For Intervention" in U.S. First Class Mail, addressed to the following:

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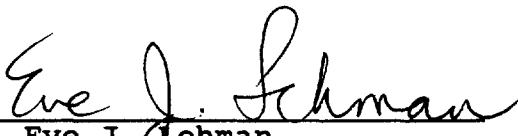
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